IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.279 OF 2005

Digambar Pandharinath Shau .. Appellant

vs.

Asian Paints (India) Ltd. .. Respondent.

G.S.Godbole i/b. Khilnani & Co., Advocate for the Appellant.

Mr.Suneeth Moholkar a/w Rani Ganpath & Cynthia Pereira i/b. M/s. Rajani Associates, Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 28th February, 2005.

P.C. :

1. Heard learned Counsel appearing for the parties. The challenge in this Appeal from Order is to the Order dated 10.2.2005 by which ad-interim relief is not granted in favour of the Appellant. Shri Godbole, learned Counsel appearing for the Appellant submitted that the Respondent may take forcible possession of the movable property which is subject matter of the suit.

2. The learned Counsel appearing for the Respondent submitted that there is an arbitration clause in the agreement and an application has been made in the trial Court praying for referring the dispute to the Arbitrator. The Counsel appearing for the Appellant challenges the existence, legality and validity of the agreement.

3. I have considered the rival submissions. In the notice of termination issued by the Respondent to the Appellant which is annexed as Exhibit A to the plaint all that is stated by the Respondent is that if lease rental is not paid by the Appellant, the Respondent will have no option but to initiate appropriate civil as well as criminal proceedings for repossession of the equipment and for recovery of the amount. As the Respondent has stated in the notice of termination itself that recourse will be taken to the legal proceeding for taking the possession of the equipment, it cannot be said that there exists any apprehension of forcible dispossession.

4. So far as reference to the arbitration is

concerned, no directions can be given. The Respondent has stated that necessary application has been taken out before the trial Court. The said application is not before me. It is for the trial Court to decide the same. In view of what is stated above, there is no reason to interfere with the impugned order. Accordingly appeal is dismissed with no orders as to costs.

(A.S.Oka, J.)